



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/171317

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2016, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Green Lake County Dept. of Human Services to reduce FoodShare benefits (FS), a hearing was held on February 10, 2016, by telephone.

The issue for determination is whether the county correctly determined petitioner's income following a review.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Green Lake County Dept. of Human Services
571 County Road A
Green Lake, WI 54941

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green Lake County.
2. Petitioner resides with her husband. Both are under age 65 and have not been determined to be disabled under social security rules. They receive FS as a two-person household.
3. In 2015 and currently the only household income has been from petitioner's employment at [REDACTED]. Throughout 2015 the county was budgeting petitioner's income as between \$1,200 and \$1,300 monthly. However, the county consistently received wage match alerts because

petitioner's quarterly income reported to the state was higher than the monthly budgeted amount. Petitioner's income fluctuates, and when the county reviewed eligibility it used two recent paystubs that were for lower income amounts, thus leading to the discrepancy.

4. Petitioner filed this appeal after receiving a notice that FS would be reduced effective January 1, 2016. After the appeal was filed a worker reviewed petitioner's two most recent paystubs and entered \$1,246 as monthly income. FS increased back to \$285.
5. After FS increased the county reviewed the income again and determined that because it fluctuated so much the best determination of monthly income would be to take an average. The county then took 2015 income, divided by 25 paychecks, and multiplied the result by 2.15 to get monthly income. The result was that monthly income was \$1,611.85, which caused FS to be reduced. The county then informed petitioner that FS would be reduced to \$198 effective March 1, 2016, and that proposed reduction became the issue for this appeal.

DISCUSSION

FS allotments are based upon a household's prospective income, meaning that the agency must estimate the household's income for the month in which FS are to be received. FS Handbook, Appendix 4.1.1. Income from the past 30 days typically is used to make the estimate, but if income fluctuates, the worker must determine a monthly average using prior months' income. 7 C.F.R. §273.10(c)(1) and (2); Handbook, App. 1.2.4.2.

I agree with the county that petitioner's income should be averaged because it fluctuates so much. However, using total 2015 income and dividing by 25 paychecks is clunky; the simple way to handle the issue is to take the full-year income and divide by 12 (petitioner testified that she received 26 paychecks in 2105, and that the record used by the county showing 25 paychecks was incomplete).

Petitioner's 2015 income was \$20,016.62. See 12/31/15 paystub. The county worker used \$18,742.74, which was the year-to-date total of "regular" earnings plus "past-time double time" on the paystub. I presume she used those two types because petitioner actually received them on that final paystub. Even taking the lower amount, \$18,742.74 divided by 12 equals \$1,561.90 per month. I will order the county to recalculate March FS based upon the \$1,561.90 monthly income.

Petitioner testified that she now has reduced her hours by eliminating Mondays as work days. She now works just Tuesday through Friday and every other weekend. At this point I have no way to determine how that change would impact FS. We would need to see at least some paychecks to determine the impact. Petitioner always can ask the county to review her FS based upon the reduction of hours, perhaps by comparing current paystubs to paystubs from the same time period in 2015. However, I will point out that if FS increased based upon the reduced hours, and then later petitioner increased her hours again, she would be required to report the change.

At this point I conclude that the county correctly averaged 2015 income to determine FS effective March 1, 2016 because it is the *best estimate* of the income.

CONCLUSIONS OF LAW

The county correctly averaged petitioner's fluctuating income to determine March, 2016 FS, but it should simply have taken 2015 yearly income and divided by twelve to get monthly income.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's March, 2016 FS using \$1,561.90 as her monthly earned income. The county shall do so within 10 days of this decision. In all other respects the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of February, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 12, 2016.

Green Lake County Department of Human Services
Division of Health Care Access and Accountability